

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

IN RE: CROSSING OF RAILROAD RIGHTS-OF- WAY—INSURANCE PROVISIONS	DOCKET NO. RMU-03-15
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**ORDER GRANTING JOINT PETITION AND
ADOPTING EMERGENCY RULE MAKING**

(Issued December 16, 2003)

On November 13, 2003, the Small Utility Group and the Iowa Railroads filed with the Utilities Board (Board) a joint petition for rule making. The members of the Small Utility Group and the Iowa Railroads are identified in the petition. The Small Utility Group and the Iowa Railroads propose amendments to 199 IAC 42.1, 42.9(3), 42.9(4), and new subrule 42.9(7). The proposed amendments would add a definition of small utility and adopt insurance requirements for small utilities in connection with crossing of railroad rights-of-way. No objections to the petition for rule making were filed. Because of the lengthy negotiations that have taken place regarding these rules, the Small Utility Group and the Iowa Railroads requested expedited adoption of the rules.

The Board adopted rules regarding crossing of railroad rights-of-way on May 2, 2003, in Docket No. RMU-02-7. The rules are contained in 199 IAC 42 and are the result of an extensive, multi-year collaboration between the railroads and utilities. However, the railroads and utilities did not reach complete agreement on the

content of the rules and, in the order adopting rules, the Board indicated that it anticipated continuing discussions among the railroad and utility groups, with the likelihood that changes to the adopted rules would be proposed. The Board also noted that substantial comments were filed on the insurance provisions and encouraged the railroads and utilities to resume discussions on these requirements.

Although the majority of the rules adopted in Docket No. RMU-02-7 became effective on July 2, 2003, the Administrative Rules Review Committee (ARRC) initially voted on June 9, 2003, to delay the effectiveness of 199 IAC 42.9(3) and (4) for 70 days. These subrules addressed insurance requirements. The ARRC subsequently approved a session delay for these subrules on August 12, 2003. The ARRC encouraged the utilities and railroads to continue discussions to resolve their differences regarding insurance requirements. Discussions continued, resulting in the joint petition for rule making filed with the Board. The ARRC removed the session delay at its meeting on December 15, 2003.

The Board will grant the joint petition for rule making and, pursuant to the authority of Iowa Code §§ 17A.4, 476.1, 476.1A, 476.1B, and 476.27, the Board adopts the amendments attached hereto and incorporated by reference. The reasons for adopting these amendments are set forth in this order and in the attached notice of adopted and filed emergency rules.

IT IS THEREFORE ORDERED:

1. The joint petition for rule making filed by the Small Utility Group and the Iowa Railroads on November 13, 2003, is granted.

2. The amendments to 199 IAC 42.1, 42.9(3), 42.9(4), and 42.9(7) set forth in the attached notice of adopted and filed emergency rules, identified as Docket No. RMU-03-15 and incorporated herein by reference, are adopted by the Board.

3. The Executive Secretary is directed to submit for publication in the Iowa Administrative Bulletin a notice in the form attached to and incorporated by reference in this order.

UTILITIES BOARD

/s/ Diane Munns

/s/ Mark O. Lambert

ATTEST:

/s/ Judi K. Cooper
Executive Secretary

/s/ Elliott Smith

Dated at Des Moines, Iowa, this 16th day of December, 2003.

UTILITIES DIVISION [199]

Adopted and Filed Emergency

Pursuant to Iowa Code sections 17A.4, 476.1, 476.1A, 476.1B, and 476.27, the Utilities Board (Board) gives notice that on December 16, 2003, the Board issued an order in Docket No. RMU-03-15, In re: Crossing of Railroad Rights-of-Way—Insurance Provisions, “Order Granting Joint Petition and Adopting Emergency Rule Making.” The Board is adopting amendments to 199 IAC 42.1, 42.9(3), 42.9(4), and new subrule 42.9(7), proposed in a joint petition for rule making filed by the Small Utility Group and the Iowa Railroads. The amendments add a definition for small utility and adopt insurance requirements for small utilities in connection with crossing of railroad rights-of-way.

The Small Utility Group is comprised of the Iowa Association of Municipal Utilities, the Iowa Association of Water Agencies, the American Water Works Association, the Iowa Rural Water Association, the Iowa Association of Electric Cooperatives, the Rural Iowa Independent Telephone Association, the Iowa League of Cities, and the Iowa Telecommunications Association. The railroads represented by the Iowa Railroads are the Union Pacific Railroad, Burlington Northern Sante Fe Railroad, Appanoose County Community Railroad, Burlington Junction Railroad, Cedar Rapids and Iowa City Railroad, Chicago Central and Pacific Railroad, Iowa Interstate Railroad, Iowa Northern Railroad, Iowa Traction

Railroad, Keokuk Junction Railroad, and Omni-Trax-Great Western Railway of Iowa/Council Bluffs Railway.

The Board adopted rules regarding crossing of railroad rights-of-way on May 2, 2003, in Docket No. RMU-02-7. The rules are contained in 199 IAC 42 and are the result of an extensive, multi-year collaboration between the railroads and utilities. However, the railroads and utilities did not reach complete agreement on the content of the rules and, in the order adopting rules, the Board indicated that it anticipated continuing discussions among the railroad and utility groups, with the likelihood that changes to the adopted rules would be proposed. The Board also noted that substantial comments were filed on the insurance provisions and encouraged the railroads and utilities to resume discussions on these requirements.

Although the majority of the rules adopted in Docket No. RMU-02-7 became effective on July 2, 2003, the Administrative Rules Review Committee (ARRC) initially voted on June 9, 2003, to delay the effectiveness of 199 IAC 42.9(3) and (4) for 70 days. These subrules addressed insurance requirements. The ARRC subsequently approved a session delay for these subrules on August 12, 2003. The ARRC encouraged the utilities and railroads to continue discussions to resolve their differences regarding insurance requirements. Discussions continued, resulting in the joint petition for rule making filed with the Board. The ARRC removed the session delay at its meeting on December 15, 2003.

The proposed amendments resolve the insurance issues between the Small Utility Group and the Iowa Railroads, reducing the coverage required to be

carried by small utilities. In compliance with Iowa Code section 17A.4(2), the Board finds that notice and public participation are unnecessary because the amendments reflect an agreement between the two groups and the rules have previously been the subject of a multi-year collaboration and rule making.

The Board also finds that, pursuant to Iowa Code section 17A.5(2)"b"(2), the normal effective date of the amendments should be waived and these amendments should be made effective upon filing, as they confer a benefit on the small utilities and railroads by implementing their agreement prior to the construction season. No other entities are directly impacted by the agreement.

The Board does not find it necessary to adopt a separate waiver provision in this rule making. The Board's general waiver provision in 199 IAC 1.3 is applicable to these rules. In addition, Iowa Code section 476.27 specifically allows a railroad and public utility to agree on different terms.

These amendments will be effective December 16, 2003.

These amendments are intended to implement Iowa Code sections 476.1, 476.1A, 476.1B, and 476.27.

The following amendments are adopted.

Item 1. Amend rule 15.1 as follows by adding the following definition:

"Small Utility" means a public utility and all affiliates of the public utility that collectively serve fewer than 20,000 customers. For purposes of this definition, a customer means the party responsible for payment of the utility services. When the specification exhibit is filed with the railroad, the small utility will certify on the specification exhibit that it meets the definition of a small utility as contained in

this rule. The specification exhibit will also state that at such time that the small utility no longer meets the small utility definition, that it will have an affirmative duty to so notify the railroad.

Item 2. Amend subrule 42.9-(3) as follows:

42.9(3) Excess liability coverage with limits of not less than \$5 million; except that the required limits shall be \$1 million for small utilities for railroad crossings by facilities other than gas or hazardous materials pipelines.

Item 3. Amend subrule 42.9(4) as follows:

42.9(4) Railroad protective liability insurance with a combined single limit of \$4 million per occurrence and \$6 million aggregate; except that the required limits shall be a combined single limit of \$2 million per occurrence and \$4 million aggregate for small utilities for railroad crossings by facilities other than gas or hazardous materials pipelines. Such coverage shall be required only during the period of construction, repair, or replacement of the facilities and may be provided by a blanket railroad protective liability insurance policy provided that the coverage, including the coverage limits, applies separately to each individual crossing on each individual railroad. ~~Such coverage may be provided by a blanket insurance policy, provided that the coverage, including the coverage limits, applies to each individual crossing on each individual railroad.~~

Item 4. Add new subrule 42.9(7):

42.9(7) Before commencing construction of any facility, the public utility must provide to the railroad proof that the public utility has procured the insurance coverage as required in this section, 199-42.9 (476) Insurance.

December 16, 2003

/s/ Diane Munns

Diane Munns
Chairman